

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 28, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1308

Cir. Ct. No. 2013CV10253

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

LOIS THATCHER,

PLAINTIFF-RESPONDENT,

V.

WISCONSIN TITLE SERVICE COMPANY, INC.,

DEFENDANT,

COLLEEN EICHER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
PAUL R. VAN GRUNSVEN, Judge. *Affirmed.*

Before Kessler and Brennan, JJ., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Appellant Colleen Eicher, *pro se*, appeals the circuit court's order in favor of Lois Thatcher. The circuit court concluded that

Thatcher owned the property in dispute in this action because Thatcher presented sufficient documentation to establish that the property had been transferred to her now deceased husband, Herbert Thatcher, even though the 1970 deed is missing. The circuit court also concluded that Thatcher was entitled to the property on equitable grounds because she and her husband maintained the property and paid property taxes on it for over forty years. We affirm.

¶2 After considering the arguments of the parties on appeal, we conclude that the circuit court’s written decision properly analyzes and disposes of this appeal. Therefore, here we conclude the formal requirements of a conveyance in WIS. STAT. § 706.02 (2013-14)¹ are satisfied by the other non-signed writings that unambiguously refer to the same transaction. Also, we conclude all the elements of WIS. STAT. § 706.04 are proven and we affirm for the reasons explained in the circuit court’s decision. *See* WIS. CT. APP. IOP VI (5)(a) (Nov. 30, 2009) (“When the trial court’s decision was based upon a written opinion ... that adequately express[es] the panel’s view of the law, the panel may ... make reference thereto, and affirm on the basis of that opinion.”).

By the Court.—Order affirmed.

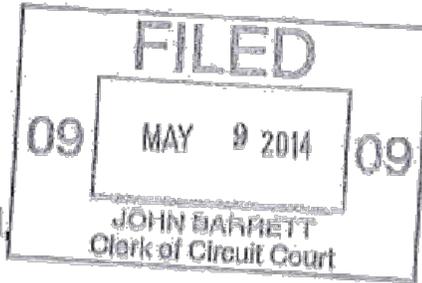
This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

LOIS THATCHER,
Plaintiff,

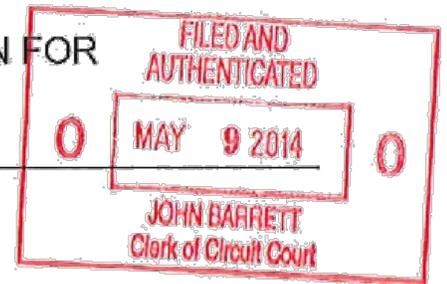
v.

LARRY WODACK, et al,
Defendants



Case No. 13CV10253

DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
DECLARATORY JUDGMENT



I. BACKGROUND

The property located at 207 S. 2nd Street in Milwaukee, WI was part of the Thomas Wodack estate probated in Milwaukee County in 1970. The probate court granted permission to the Administrator of the Wodack estate to sell the property to cover the estate's claims and expenses. The property was purchased by Herbert E. Thatcher on November 4, 1970, as indicated by the closing statement attached to the Final Account filed in the Wodack probate. In March of 2013, Mr. Thatcher quit claimed the property from himself, as grantor, to himself and his wife, Lois Thatcher, as joint tenants. Mr. Thatcher died shortly thereafter and Ms. Thatcher succeeded to the interest of her husband.

If a deed was issued conveying the property from the Wodack estate to Mr. Thatcher, it was never recorded. In an attempt to remedy this circumstance, Ms. Thatcher's attorney contacted some of the known and living Wodack heirs to request their cooperation in re-opening the Wodack estate for the purpose of issuing a new deed. One of the heirs, Colleen Eicher, is objecting to Ms. Thatcher's title to the property. Mr. Thatcher's estate is currently being probated in Waukesha County in case no. 13-PR-0140. The Waukesha probate court determined that it was not the proper forum to hear the ownership dispute involving Ms. Eicher.

Ms. Thatcher has filed a Motion for Declaratory Judgment in which she seeks an Order declaring that she is the sole owner of the property at issue. Ms. Eicher objects to this motion. The Court conducted a hearing on March 28, 2014, at which the parties were given an opportunity to further explain their positions and respond to questions posed by the Court. Ms. Eicher requested additional time to look for evidence supporting her defense. The Court agreed to adjourn this matter and allow the parties to submit supplemental materials relevant to the issues raised at the hearing.

II. STANDARD OF REVIEW



“Any person claiming an interest in real property may maintain an action against any person claiming a conflicting interest, and may demand a declaration of interests.” Wis. Stat. § 841.01(1). Wisconsin’s Uniform Declaratory Judgments Act gives courts the power “to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Wis. Stat. § 806.04(1). Any person interested under a deed, will, written contract or other writings constituting a contract may obtain a determination regarding the construction or validity of an instrument and obtain a declaration of rights, status or other legal relations thereunder. Wis. Stat. § 806.04(2). The purpose of the Act is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.” Wis. Stat. § 806.04(12).

In order for a court to grant declaratory relief, a justiciable controversy must exist. *Miller Brands-Milwaukee, Inc. v. Case*, 162 Wis. 2d 684, 694 (1991). A controversy is justiciable where the following conditions are satisfied:

1. A controversy in which a claim of right is asserted against one who has an interest in contesting it.
2. The controversy is between persons whose interests are adverse.
3. The party seeking declaratory relief has a legal interest in the controversy—that is to say, a legally protectable interest.
4. The issue involved in the controversy is ripe for judicial determination.

Olson v. Town of Cottage Grove, 2008 WI 51, ¶ 29, 309 Wis. 2d 365, 749 N.W.2d 211.

The decision to grant or deny declaratory relief falls within the discretion of the circuit court. *Id.*, ¶ 35. The court may refuse to render a declaratory judgment where judgment “would not terminate the uncertainty or controversy giving rise to the proceeding.” Wis. Stat. § 806.04(6).

III. ANALYSIS

The general rule is that transactions affecting any interest in land are not valid unless evidenced by a conveyance. A “conveyance” is defined as a written instrument evidencing a transaction governed by Chapter 706, that satisfies all of the following formal requirements:

- a) Identifies the parties; and
- b) Identifies the land; and
- c) Identifies the interest conveyed, and any material term, condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered; and
- d) Is signed by or on behalf of each of the grantors; and
- e) Is signed by or on behalf of all parties, if a lease or contract to convey; and
- f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01 (7) except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage; and
- g) Is delivered.

Wis. Stats. §§ 706.01(4), 706.02(1).

While a deed is generally relied on to satisfy the formal requirements for a valid conveyance, these requirements can also be satisfied by “several writings which show expressly on their faces that they refer to the same transaction, and which the parties have mutually acknowledged by conduct or agreement as evidences of the transaction.” Wis. Stat. § 706.02(2)(c).

The plaintiff is unable to produce a deed evidencing the conveyance of the Property to Herbert Thatcher in 1970. She has, however, produced other writings which clearly acknowledge the transaction in which the Property was conveyed to Mr. Thatcher in 1970. The closing statement is particularly important because it contains the signatures of both the grantor and the grantee. These signatures constitute a mutual acknowledgment by the parties that the document accurately evidenced the transaction, as required by Wis. Stat. § 706.02(2)(c). Interpreting an earlier version of Wis. Stat. § 706.02(2), the Court in *Kelly v. Sullivan* explained:

The written contract or memorandum required by such a statute need not consist of one writing alone, but may be made up of several. It is not necessary that all the writings constituting the memorandum be signed. It is enough if one is signed and the others (1) are physically annexed to it, (2) are expressly referred to or (3) show on their face that they refer to the same transaction.

Kelly v. Sullivan, 252 Wis. 52, 57, 30 N.W.2d 209 (1947).

Thus, as long as one document contains the parties’ signature, the formal requirements of a conveyance may be established by other non-signed writings that unambiguously refer to the same transaction as the signed writing. The table below identifies how certain writings submitted by the plaintiff satisfy each statutory requirement, and clearly refer to the same transaction:

Formal Requirements for Conveyance per § 706.02(1)	Document that Satisfies the Requirement
(a) Identifies the parties	(1) <u>Closing Statement (attached to Final Account in Wodack Estate)</u> ¹ “Seller” identified as “Estate of Thomas Wodack” “Buyer” identified as “Herbert E. Thatcher”
(b) Identifies the land	(1) <u>Closing Statement (attached to Final Account in Wodack Estate)</u> “Address” identified as “207 South 2 nd Street” (2) <u>Invoice from Wisconsin Title Service</u> ² Owner’s Policy for \$4500 marked paid on 11/6/1970 References “Thatcher” Policy issued for “The North 20 feet of Lot 2 in Block 11 in Walkers Point, in the City of Milwaukee.”
(c) Identifies the interest conveyed, and any material term, condition, etc. affecting interest	(1) <u>Deed conveying the Property to Thomas Wodack</u> ³ Deed signed by grantors Anna Moskowitz and Hermine Wald on 1/8/54, conveying fee simple interest in the premises located at the North 20 feet of Lot

¹ Steber Aff. Ex. 8.

² *Id.* Ex. 9.

³ *Id.* Ex. 1.

	<p>2, in Block numbered 11, in Walker's Point...</p> <p>(2) <u>Report of Sale & Order Confirming Sale⁴ (Wodack probate matter)</u> Finding that the Administrator of the Wodack Estate did sell the premises located at 207 South 2nd St. at private sale on 11/4/1970 for \$4,500.</p> <p>(3) <u>Closing Statement (attached to Final Account in Wodack Estate)</u> Lists the purchase price for the real estate as \$4,500; Closing date identified as November 4, 1970;</p> <p>(4) <u>Final Judgment of the Thomas Wodack Estate⁵</u> Finding that the deceased did not possess any real property in joint tenancy (Finding #6) Finding that the deceased did not have a life estate in any property at the time of death (Finding #8)</p>
(d) Signed by or on behalf of each grantor	<p>(1) <u>Order to Sell Real Estate filed in Wodack probate matter⁶</u> Order authorizing Administrator Mathew Wodack to sell or encumber the real estate located at 207 South 2nd St. (signed by Court on 10/27/1970)</p> <p>(2) <u>Closing Statement (attached to Final Account in Wodack Estate)</u> Signed by Mathew Wodack on behalf of Grantor "Estate of Thomas Wodack," pursuant to his authority as Administrator of Wodack Estate</p>
(e) Signed by or on behalf of all parties, if a lease or contract to convey	<p>(1) <u>Closing Statement (attached to Final Account in Wodack Estate)</u> Signed by Herbert B. Thatcher, the Grantee and buyer of the property located at 207 South 2nd St.</p>
(f) Signed by or on behalf of each spouse, if conveyance alienates interest of a married person in a homestead	<p><i>N/A Thomas Wodack was a widower and the Property conveyed was not marital property</i></p>
(g) Delivered	<p>(1) <u>Closing Statement (attached to Final Account in Wodack Estate)</u> Signature of Herbert Thatcher establishes that this document evidencing conveyance was delivered to him</p> <p>(2) <u>Order Confirming Sale of Real Estate in Wodack Estate</u> Ordering the Administrator to "execute and deliver a good and sufficient deed of conveyance" of the real estate sold, to the purchaser thereof upon his complying with the conditions of the sale (dated 11/4/1970)</p> <p>(3) <u>Final Account of Wodack Estate⁷</u> Includes \$3,938.25 as proceeds from sale of real estate with reference to attached closing statement</p> <p>(4) <u>Abstract of Title to Property prepared for Thomas Wodack⁸ in 1955</u> Mr. Thatcher's possession of an Abstract prepared for Mr. Wodack establishes that it was delivered to Mr. Thatcher as a result of the conveyance in 1970 Identifies real estate as "The North 20 feet of Lot 2, in Block 11, in Walker's Point, in the City of Milwaukee."</p>

By satisfying each of the formal requirements of Wis. Stat. § 706.02, the several writings described above sufficiently evidence a valid conveyance transferring ownership in the Property from the Thomas Wodack Estate to Herbert Thatcher in 1970. However, even if the formal requirements are

⁴ *Id.* Ex. 5, Ex. 6.

⁵ *Id.* Ex. 12.

⁶ *Id.* Ex. 4.

⁷ *Id.* Ex. 10.

⁸ *Lois Thatcher Aff. Ex. 1.*

not completely satisfied by these written documents, the transaction would nevertheless be enforceable on equitable grounds. Under Wis. Stat. § 706.04, a transaction may be enforceable despite non-compliance with one or more of the requirements of Wis. Stat. § 706.02, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:

- 1) The deficiency of the conveyance may be supplied by reformation in equity; or
- 2) The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or
- 3) The party against whom enforcement is sought is equitably estopped from asserting the deficiency. A party may be so estopped whenever, pursuant to the transaction and in good faith reliance thereon, the party claiming estoppel has changed his or her position to the party's substantial detriment under circumstances such that the detriment so incurred may not be effectively recovered otherwise than by enforcement of the transaction, and either:
 - (a) The grantee has been admitted into substantial possession or use of the premises or has been permitted to retain such possession or use after termination of a prior right thereto; or
 - (b) The detriment so incurred was incurred with the prior knowing consent or approval of the party sought to be estopped.

Wis. Stat. § 706.04.

If the requirements of Wis. Stat. § 706.04 are met, there may be a valid agreement for the transfer of land even where no writing exists. *Nelson v. Albrechtson*, 93 Wis. 2d 552, 556, 287 N.W.811 (1980). Wis. Stat. § 706.04 “can be used to cure formal defects in a property transaction, but it will not create an agreement where none in fact ever existed.” *Id.* at 563. An essential element of even the most informal agreements requires proof that the grantor assented to the transaction. *Id.* at 561. The facts of this case clearly establish that a transaction took place in 1970 wherein the Administrator of the Wodack Estate sold the Property to Herbert Thatcher for \$4,500. The completion of this transaction is evidenced by (1) the documents filed in the Wodack Probate matter, (2) the fact that the Wodack Estate was able to be closed, (3) Mr. Thatcher’s uninterrupted possession of the Property from 1970 until his death, and (4) Mr. Thatcher’s consistent maintenance of the Property, including paying property taxes and razing a building. (Mark Thatcher Aff. ¶¶ 2, 6, 8).

Since the elements of the transaction are clearly and satisfactorily proven in this case, the transaction is enforceable if one of the three circumstances identified in Wis. Stat. § 706.04 is applicable. The facts of this case easily satisfy subsection (3). Mr. Thatcher changed his position to his detriment when he paid \$4,500 in good faith reliance on the transaction by which he purchased the Property from the Wodack Estate. Mr. and Mrs. Thatcher both continued to rely on the transaction to their detriment by paying property taxes on the Property, maintaining and improving the Property, and demolishing a building on the Property in response to a raze order. (Mark Thatcher Aff. ¶¶ 5-8). The money, time and effort expended by the Thatchers to maintain the Property is a detriment that cannot be effectively recovered other than by enforcement of the transaction. Finally, Mr. Thatcher, the grantee, was admitted into substantial possession and use of the premises from 1970 until his death in 2013. See

Wis. Stat. § 706.04(3)(a). Thus, under Wis. Stat. § 706.04(3), Ms. Eicher is equitably estopped from asserting that the transaction was deficient based on the missing deed. Wis. Stat. § 706.04(3).

The documents submitted by the plaintiff establish a valid written conveyance pursuant to Wis. Stat. § 706.02. The transaction by which Mr. Thatcher purchased the Property in 1970 is also enforceable on equitable grounds pursuant to Wis. Stat. § 706.04. Either way, there is a substantial factual basis for finding that ownership of the Property was transferred from the Thomas Wodack Estate to Herbert Thatcher in 1970. Since Herbert Thatcher became the owner of the Property in 1970, the Quit Claim Deed he executed in March of 2013 effectively transferred his fee simple interest in the Property to himself and his wife as Joint Tenants. Upon Herbert Thatcher's death, Lois Thatcher succeeded to her husband's interest in the Property and she is now the sole owner of the Property.

IV. CONCLUSION

The Plaintiff's Motion for Declaratory Judgment is hereby GRANTED, and the Court ORDERS that Lois Thatcher is the sole and exclusive owner of the real property located at 207 S. 2nd Street in Milwaukee. In light of the foregoing, the Court orders this action be dismissed with prejudice as to the individual defendants and without costs to any party. The claim by plaintiff against Wisconsin Title Service Company, Inc. survives and has been scheduled for Scheduling Conference on June 6, 2014 at 10:45 a.m.

Dated this 9th day of May, 2014, in Milwaukee, Wisconsin.

BY THE COURT:



The Honorable Paul R. Van Grunsven
Milwaukee County Circuit Court, Branch 9

THIS IS A FINAL ORDER FOR PURPOSES OF APPEAL